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May 7, 2008

The Honorable Harold Baer
500 Pearl Street
Room 2230
New York, New York 10007USDS SDNY
DOCUMENT
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Re: File No. : 001/53827/01
 Claimant : Hilda Kreuzer
 Client : The Stop & Shop Supermarket Company LLC.
 D/Loss : 9/3/07
 Our File No. : SAS 0212N8 BJD

Dear Judge Baer:

This office represents the Defendant, Stop & Shop Supermarket Company LLC in connection with the above referenced matter. As you may recall, plaintiff in this action alleges that she was caused to suffer personal injury when the automatic doors at the subject Stop & Shop supermarket struck her. As you may also recall, we have decided to commence an action against the company that installed and performed repairs on the subject doors. To that end, I have served and filed a motion seeking leave for our office to commence a third-party action against said company.

As we informed you during the May 1, 2008 conference, the company that installed and performed repairs on the subject doors is a New York Corporation. While we originally believed that our impleading a New York Corporation would defeat diversity jurisdiction, in that the Plaintiff is a New York resident, and while we represented to the Court on May 1, 2008 that we would therefore be compelled to remove the instant action back to State Court, our research in preparation to remove this action has indicated otherwise.

Specifically, with regard to impleader actions, it is generally held that where the federal court has jurisdiction of the original suit, a defendant seeking to implead a third party under Fed R. Civ P. Rule 14(a) need not show independent grounds of jurisdiction. Rather, third party claims are viewed as ancillary to the main claim for jurisdictional purposes. See Schwab v Erie Lackawanna RR Co. (3rd Cir. 1971), 5438 F2d 62. Thus, in a diversity case a defendant can

implead a citizen of the same state as the plaintiff. See Fawvor v Texaco, Inc. (5th Cir. 1977) 546 F2d 636. In light of the foregoing, defendant Stop & Shop Supermarket Company LLC has elected to remain in federal court and requests that a pre-trial conference be scheduled to set a discovery schedule.

I appreciate your attention to this matter, and I apologize for any inconvenience this has caused the Court. Please feel free to contact me with any comments or questions you may have regarding this matter.

Very truly yours,

Erin D. Roach
ERIN D. ROACH
(646) 536-5737

EDR

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*I'm glad to know
this but need I schedule
another PTC I'd like to say
a fairly simple motion - I
have researched the matter &
have your view but see no
I'd accept decisions which
gives me some pause
but if there are any other
until we your brief - after
at the time I decide & if
I have your view I will
set a date for a new PTC*

SO ORDERED:

Harold Baer, Jr.
Harold Baer, Jr., U.S.D.J.

Date: 5/7/08

Endorsement:

I'm glad to know this but before I schedule another PTC I'd like to see a fully briefed motion. I have researched the matter and share your view but see no 2d Circuit decisions which gives me some pause. I trust if there are any they will be your brief after or at the time I decide and if I share your view I will set a date for a new PTC.